

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

THOMAS HWEI HO, M.D.)

**Physician's and Surgeon's)
Certificate No. A 121504)**

Respondent)

Case No. 800-2017-035146

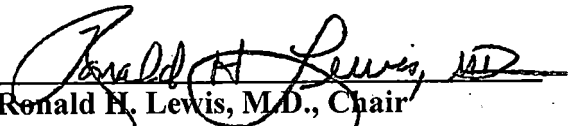
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 3, 2019.

IT IS SO ORDERED: April 5, 2019.

MEDICAL BOARD OF CALIFORNIA


**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9074
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2017-035146

14 **THOMAS HWEI HO, M.D.**
16345 Ponderosa Street
15 Fountain Valley, CA 92708

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate**
17 **No. A 121504,**

Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Rosemary F.
25 Luzon, Deputy Attorney General.

26 2. Respondent Thomas Hwei Ho, M.D. (Respondent) is represented in this proceeding
27 by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Ave. Suite 1750, Los
28 Angeles, California 90071.

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1 7. Respondent is fully aware of his legal rights in this matter, including the right to a
2 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
3 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
4 to the issuance of subpoenas to compel the attendance of witnesses and the production of
5 documents; the right to reconsideration and court review of an adverse decision; and all other
6 rights accorded by the California Administrative Procedure Act and other applicable laws, having
7 been fully advised of same by his attorney of record, Peter R. Osinoff, Esq.

8 8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
9 waives and gives up each and every right set forth above.

10 **CULPABILITY**

11 9. Respondent does not contest that, at an administrative hearing, Complainant could
12 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
13 No. 800-2017-035146, a copy of which is attached hereto as Exhibit B, and that he has thereby
14 subjected his Physician's and Surgeon's Certificate No. A 121504 to disciplinary action.

15 10. Respondent agrees that if he ever petitions for early termination or modification of
16 this Stipulated Settlement and Disciplinary Order, or if an accusation and/or petition to revoke
17 probation is filed against him before the Medical Board of California, all of the charges and
18 allegations contained in Accusation No. 800-2017-035146 shall be deemed true, correct and fully
19 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
20 involving Respondent in the State of California.

21 11. Respondent agrees that his Physician's and Surgeon's Certificate No. A 121504 is
22 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
23 in the Disciplinary Order below.

24 **CONTINGENCY**

25 12. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the
26 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
27 submitted to the Board for its consideration in the above-entitled matter and, further, that the
28 Board shall have a reasonable period of time in which to consider and act on this Stipulated

1 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
2 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
3 prior to the time the Board considers and acts upon it.

4 13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
5 and void and not binding upon the parties unless approved and adopted by the Board, except for
6 this paragraph, which shall remain in full force and effect. Respondent fully understands and
7 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
8 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
9 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
10 the Board, any member thereof, and/or any other person from future participation in this or any
11 other matter affecting or involving Respondent. In the event that the Board does not, in its
12 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
13 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
14 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
15 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
16 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
17 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
18 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

19 **ADDITIONAL PROVISIONS**

20 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
21 to be an integrated writing representing the complete, final and exclusive embodiment of the
22 agreements of the parties in the above-entitled matter.

23 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
25 signatures thereto, shall have the same force and effect as the originals.

26 16. In consideration of the foregoing stipulations, the parties agree that the Board may,
27 without further notice or opportunity to be heard by Respondent, issue and enter the following
28 Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 121504
3 issued to Respondent Thomas Hwei Ho, M.D., is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for six (6) years from the effective date of the Decision on the
5 following terms and conditions.

6 1. **CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO**
7 **RECORDS AND INVENTORIES**. Respondent shall maintain a record of all controlled
8 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any
9 recommendation or approval which enables a patient or patient's primary caregiver to possess or
10 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health
11 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name
12 and address of the patient; 2) the date; 3) the character and quantity of controlled substances
13 involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

14 Respondent shall keep these records in a separate file or ledger, in chronological order. All
15 records and any inventories of controlled substances shall be available for immediate inspection
16 and copying on the premises by the Board or its designee at all times during business hours and
17 shall be retained for the entire term of probation.

18 2. **CONTROLLED SUBSTANCES - ABSTAIN FROM USE**. Respondent shall abstain
19 completely from the personal use or possession of controlled substances as defined in the
20 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
21 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
22 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
23 illness or condition.

24 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
25 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
26 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
27 telephone number.

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1 3. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
2 use of products or beverages containing alcohol.

3 4. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
4 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
5 advance by the Board or its designee. Respondent shall provide the approved course provider
6 with any information and documents that the approved course provider may deem pertinent.
7 Respondent shall participate in and successfully complete the classroom component of the course
8 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
9 complete any other component of the course within one (1) year of enrollment. The medical
10 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
11 Medical Education (CME) requirements for renewal of licensure.

12 A medical record keeping course taken after the acts that gave rise to the charges in the
13 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
14 or its designee, be accepted towards the fulfillment of this condition if the course would have
15 been approved by the Board or its designee had the course been taken after the effective date of
16 this Decision.

17 Respondent shall submit a certification of successful completion to the Board or its
18 designee not later than 15 calendar days after successfully completing the course, or not later than
19 15 calendar days after the effective date of the Decision, whichever is later.

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1 5. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days
2 of the effective date of this Decision, Respondent shall enroll in a professionalism program, that
3 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
4 Respondent shall participate in and successfully complete that program. Respondent shall
5 provide any information and documents that the program may deem pertinent. Respondent shall
6 successfully complete the classroom component of the program not later than six (6) months after
7 Respondent's initial enrollment, and the longitudinal component of the program not later than the
8 time specified by the program, but no later than one (1) year after attending the classroom
9 component. The professionalism program shall be at Respondent's expense and shall be in
10 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

11 A professionalism program taken after the acts that gave rise to the charges in the
12 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
13 or its designee, be accepted towards the fulfillment of this condition if the program would have
14 been approved by the Board or its designee had the program been taken after the effective date of
15 this Decision.

16 Respondent shall submit a certification of successful completion to the Board or its
17 designee not later than 15 calendar days after successfully completing the program or not later
18 than 15 calendar days after the effective date of the Decision, whichever is later.

19 6. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
20 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
21 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
22 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, with experience
23 in addiction medicine, who shall consider any information provided by the Board or designee and
24 any other information the psychiatrist deems relevant, and shall furnish a written evaluation
25 report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date
26 of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent
27 shall pay the cost of all psychiatric evaluations and psychological testing.

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Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

7. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist with any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

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1 8. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
2 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
3 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
4 who shall consider any information provided by the Board or designee and any other information
5 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
6 designee. Respondent shall provide the evaluating physician with any information and
7 documentation that the evaluating physician may deem pertinent.

8 Following the evaluation, Respondent shall comply with all restrictions or conditions
9 recommended by the evaluating physician within 15 calendar days after being notified by the
10 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
11 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
12 Board or its designee for prior approval the name and qualifications of a California licensed
13 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
14 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
15 further notice from the Board or its designee.

16 The treating physician shall consider any information provided by the Board or its designee
17 or any other information the treating physician may deem pertinent prior to commencement of
18 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
19 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
20 Respondent shall provide the Board or its designee with any and all medical records pertaining to
21 treatment that the Board or its designee deems necessary.

22 If, prior to the completion of probation, Respondent is found to be physically incapable of
23 resuming the practice of medicine without restrictions, the Board shall retain continuing
24 jurisdiction over Respondent's license and the period of probation shall be extended until the
25 Board determines that Respondent is physically capable of resuming the practice of medicine
26 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

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1 9. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
2 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
3 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
4 licenses are valid and in good standing, and who are preferably American Board of Medical
5 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
6 relationship with Respondent, or other relationship that could reasonably be expected to
7 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
8 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
9 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

10 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
11 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
12 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
13 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
14 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
15 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
16 signed statement for approval by the Board or its designee.

17 Within 60 calendar days of the effective date of this Decision, and continuing throughout
18 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
19 make all records available for immediate inspection and copying on the premises by the monitor
20 at all times during business hours and shall retain the records for the entire term of probation.

21 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
22 date of this Decision, Respondent shall receive a notification from the Board or its designee to
23 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
24 shall cease the practice of medicine until a monitor is approved to provide monitoring
25 responsibility.

26 The monitor(s) shall submit a quarterly written report to the Board or its designee which
27 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
28 are within the standards of practice of medicine, and whether Respondent is practicing medicine

1 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
2 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
3 preceding quarter.

4 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
5 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
6 name and qualifications of a replacement monitor who will be assuming that responsibility within
7 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
8 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
9 notification from the Board or its designee to cease the practice of medicine within three (3)
10 calendar days after being so notified. Respondent shall cease the practice of medicine until a
11 replacement monitor is approved and assumes monitoring responsibility.

12 In lieu of a monitor, Respondent may participate in a professional enhancement program
13 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
14 review, semi-annual practice assessment, and semi-annual review of professional growth and
15 education. Respondent shall participate in the professional enhancement program at Respondent's
16 expense during the term of probation.

17 10. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
18 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
19 where: 1) Respondent merely shares office space with another physician but is not affiliated for
20 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
21 location.

22 If Respondent fails to establish a practice with another physician or secure employment in
23 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
24 Respondent shall receive a notification from the Board or its designee to cease the practice of
25 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
26 practice until an appropriate practice setting is established.

27 If, during the course of the probation, the Respondent's practice setting changes and the
28 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent

1 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
2 If Respondent fails to establish a practice with another physician or secure employment in an
3 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
4 shall receive a notification from the Board or its designee to cease the practice of medicine within
5 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
6 appropriate practice setting is established.

7 11. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
8 days of the effective date of this Decision, Respondent shall provide to the Board the names,
9 physical addresses, mailing addresses, and telephone numbers of any and all employers and
10 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
11 worksite monitor, and Respondent's employers and supervisors to communicate regarding
12 Respondent's work status, performance, and monitoring.

13 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
14 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
15 privileges.

16 12. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
17 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
18 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
19 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
20 make daily contact with the Board or its designee to determine whether biological fluid testing is
21 required. Respondent shall be tested on the date of the notification as directed by the Board or its
22 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
23 any time, including weekends and holidays. Except when testing on a specific date as ordered by
24 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
25 basis. The cost of biological fluid testing shall be borne by the Respondent.

26 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
27 During the second year of probation and for the duration of the probationary term, up to five (5)
28 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no

1 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
2 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
3 of random tests to the first-year level of frequency for any reason.

4 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
5 approved in advance by the Board or its designee, that will conduct random, unannounced,
6 observed, biological fluid testing and meets all of the following standards:

7 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
8 Association or have completed the training required to serve as a collector for the United
9 States Department of Transportation.

10 (b) Its specimen collectors conform to the current United States Department of
11 Transportation Specimen Collection Guidelines.

12 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
13 by the United States Department of Transportation without regard to the type of test
14 administered.

15 (d) Its specimen collectors observe the collection of testing specimens.

16 (e) Its laboratories are certified and accredited by the United States Department of Health
17 and Human Services.

18 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
19 of receipt and all specimens collected shall be handled pursuant to chain of custody
20 procedures. The laboratory shall process and analyze the specimens and provide legally
21 defensible test results to the Board within seven (7) business days of receipt of the
22 specimen. The Board will be notified of non-negative results within one (1) business day
23 and will be notified of negative test results within seven (7) business days.

24 (g) Its testing locations possess all the materials, equipment, and technical expertise
25 necessary in order to test Respondent on any day of the week.

26 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
27 for the detection of alcohol and illegal and controlled substances.

28 (i) It maintains testing sites located throughout California.

- 1 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
2 computer database that allows the Respondent to check in daily for testing.
- 3 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
4 access to drug test results and compliance reporting information that is available 24 hours a
5 day.
- 6 (l) It employs or contracts with toxicologists that are licensed physicians and have
7 knowledge of substance abuse disorders and the appropriate medical training to interpret
8 and evaluate laboratory biological fluid test results, medical histories, and any other
9 information relevant to biomedical information.
- 10 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
11 while practicing, even if the Respondent holds a valid prescription for the substance.
- 12 Prior to changing testing locations for any reason, including during vacation or other travel,
13 alternative testing locations must be approved by the Board and meet the requirements above.
- 14 The contract shall require that the laboratory directly notify the Board or its designee of
15 non-negative results within one (1) business day and negative test results within seven (7)
16 business days of the results becoming available. Respondent shall maintain this laboratory or
17 service contract during the period of probation.
- 18 A certified copy of any laboratory test result may be received in evidence in any
19 proceedings between the Board and Respondent.
- 20 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
21 administered to himself or herself a prohibited substance, the Board shall order Respondent to
22 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
23 medicine or providing medical services. The Board shall immediately notify all of Respondent's
24 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
25 provide medical services while the cease-practice order is in effect.
- 26 A biological fluid test will not be considered negative if a positive result is obtained while
27 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
28 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

1 After the issuance of a cease-practice order, the Board shall determine whether the positive
2 biological fluid test is in fact evidence of prohibited substance use by consulting with the
3 specimen collector and the laboratory, communicating with the licensee, his or her treating
4 physician(s), other health care provider, or group facilitator, as applicable.

5 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
6 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

7 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
8 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
9 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
10 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

11 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
12 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
13 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
14 any other terms or conditions the Board determines are necessary for public protection or to
15 enhance Respondent's rehabilitation.

16 Respondent shall notify the Board or its designee in writing at least five (5) calendar days
17 prior to any anticipated travel outside the United States. This written notification shall include
18 documentation verifying the purpose and the length of the international travel. Upon
19 Respondent's return to the United States following travel outside the United States, Respondent
20 shall not resume the practice of medicine until Respondent submits to and passes biological fluid
21 testing.

22 13. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
23 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
24 prior approval, the name of a substance abuse support group which he or she shall attend for the
25 duration of probation. Respondent shall attend substance abuse support group meetings at least
26 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
27 abuse support group meeting costs.

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1 The facilitator of the substance abuse support group meeting shall have a minimum of three
2 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
3 or certified by the state or nationally certified organizations. The facilitator shall not have a
4 current or former financial, personal, or business relationship with Respondent within the last five
5 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
6 the same facilitator does not constitute a prohibited current or former financial, personal, or
7 business relationship.

8 The facilitator shall provide a signed document to the Board or its designee showing
9 Respondent's name, the group name, the date and location of the meeting, Respondent's
10 attendance, and Respondent's level of participation and progress. The facilitator shall report any
11 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
12 or its designee, within twenty-four (24) hours of the unexcused absence.

13 14. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
14 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
15 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
16 licensed physician and surgeon, other licensed health care professional if no physician and
17 surgeon is available, or, as approved by the Board or its designee, a person in a position of
18 authority who is capable of monitoring the Respondent at work.

19 The worksite monitor shall not have a current or former financial, personal, or familial
20 relationship with Respondent, or any other relationship that could reasonably be expected to
21 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
22 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
23 monitor, this requirement may be waived by the Board or its designee, however, under no
24 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

25 The worksite monitor shall have an active unrestricted license with no disciplinary action
26 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
27 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
28 by the Board or its designee.

1 Respondent shall pay all worksite monitoring costs.

2 The worksite monitor shall have face-to-face contact with Respondent in the work
3 environment on as frequent a basis as determined by the Board or its designee, but not less than
4 once per week; interview other staff in the office regarding Respondent's behavior, if requested
5 by the Board or its designee; and review Respondent's work attendance.

6 The worksite monitor shall verbally report any suspected substance abuse to the Board and
7 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
8 substance abuse does not occur during the Board's normal business hours, the verbal report shall
9 be made to the Board or its designee within one (1) hour of the next business day. A written
10 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
11 any other information deemed important by the worksite monitor shall be submitted to the Board
12 or its designee within 48 hours of the occurrence.

13 The worksite monitor shall complete and submit a written report monthly or as directed by
14 the Board or its designee which shall include the following: (1) Respondent's name and
15 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
16 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
17 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
18 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
19 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
20 lead to suspected substance abuse by Respondent. Respondent shall complete any required
21 consent forms and execute agreements with the approved worksite monitor and the Board, or its
22 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

23 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
24 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
25 approval, the name and qualifications of a replacement monitor who will be assuming that
26 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
27 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
28 monitor, Respondent shall receive a notification from the Board or its designee to cease the

1 practice of medicine within three (3) calendar days after being so notified. Respondent shall
2 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
3 responsibility.

4 15. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
5 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
6 probation.

7 A. If Respondent commits a major violation of probation as defined by section
8 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
9 one or more of the following actions:

10 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
11 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
12 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
13 order issued by the Board or its designee shall state that Respondent must test negative for at least
14 a month of continuous biological fluid testing before being allowed to resume practice. For
15 purposes of determining the length of time a Respondent must test negative while undergoing
16 continuous biological fluid testing following issuance of a cease-practice order, a month is
17 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
18 notified in writing by the Board or its designee that he or she may do so.

19 (2) Increase the frequency of biological fluid testing.

20 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
21 other action as determined by the Board or its designee.

22 B. If Respondent commits a minor violation of probation as defined by section
23 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
24 one or more of the following actions:

25 (1) Issue a cease-practice order;

26 (2) Order practice limitations;

27 (3) Order or increase supervision of Respondent;

28 (4) Order increased documentation;

- 1 (5) Issue a citation and fine, or a warning letter;
- 2 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
- 3 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
- 4 Regulations, at Respondent's expense;
- 5 (7) Take any other action as determined by the Board or its designee.

6 C. Nothing in this Decision shall be considered a limitation on the Board's authority

7 to revoke Respondent's probation if he or she has violated any term or condition of probation. If

8 Respondent violates probation in any respect, the Board, after giving Respondent notice and the

9 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

10 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed

11 against Respondent during probation, the Board shall have continuing jurisdiction until the matter

12 is final, and the period of probation shall be extended until the matter is final.

13 16. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

14 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the

15 Chief Executive Officer at every hospital where privileges or membership are extended to

16 Respondent, at any other facility where Respondent engages in the practice of medicine,

17 including all physician and locum tenens registries or other similar agencies, and to the Chief

18 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

19 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

20 calendar days.

21 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

22 17. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE

23 NURSES. During probation, Respondent is prohibited from supervising physician assistants and

24 advanced practice nurses.

25 18. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules

26 governing the practice of medicine in California and remain in full compliance with any court

27 ordered criminal probation, payments, and other orders.

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1 19. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
2 under penalty of perjury on forms provided by the Board, stating whether there has been
3 compliance with all the conditions of probation.

4 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
5 of the preceding quarter.

6 20. GENERAL PROBATION REQUIREMENTS.

7 Compliance with Probation Unit

8 Respondent shall comply with the Board's probation unit.

9 Address Changes

10 Respondent shall, at all times, keep the Board informed of Respondent's business and
11 residence addresses, email address (if available), and telephone number. Changes of such
12 addresses shall be immediately communicated in writing to the Board or its designee. Under no
13 circumstances shall a post office box serve as an address of record, except as allowed by Business
14 and Professions Code section 2021(b).

15 Place of Practice

16 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
17 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
18 facility.

19 License Renewal

20 Respondent shall maintain a current and renewed California physician's and surgeon's
21 license.

22 Travel or Residence Outside California

23 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
24 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
25 (30) calendar days.

26 In the event Respondent should leave the State of California to reside or to practice,
27 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
28 departure and return.

1 21. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
2 available in person upon request for interviews either at Respondent's place of business or at the
3 probation unit office, with or without prior notice throughout the term of probation.

4 22. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
5 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
6 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
7 defined as any period of time Respondent is not practicing medicine as defined in Business and
8 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
9 patient care, clinical activity or teaching, or other activity as approved by the Board. If
10 Respondent resides in California and is considered to be in non-practice, Respondent shall
11 comply with all terms and conditions of probation. All time spent in an intensive training
12 program which has been approved by the Board or its designee shall not be considered non-
13 practice and does not relieve Respondent from complying with all the terms and conditions of
14 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
15 on probation with the medical licensing authority of that state or jurisdiction shall not be
16 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
17 period of non-practice.

18 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
19 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
20 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
21 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
22 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

23 Respondent's period of non-practice while on probation shall not exceed two (2) years.

24 Periods of non-practice will not apply to the reduction of the probationary term.

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1 Periods of non-practice for a Respondent residing outside of California will relieve
2 Respondent of the responsibility to comply with the probationary terms and conditions with the
3 exception of this condition and the following terms and conditions of probation: Obey All Laws;
4 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
5 Controlled Substances; and Biological Fluid Testing.

6 23. COMPLETION OF PROBATION. Respondent shall comply with all financial
7 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
8 completion of probation. Upon successful completion of probation, Respondent's certificate shall
9 be fully restored.

10 24. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
11 of probation is a violation of probation. If Respondent violates probation in any respect, the
12 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
13 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
14 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
15 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
16 the matter is final.

17 25. LICENSE SURRENDER. Following the effective date of this Decision, if
18 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
19 the terms and conditions of probation, Respondent may request to surrender his or her license.
20 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
21 determining whether or not to grant the request, or to take any other action deemed appropriate
22 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
23 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
24 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
25 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
26 application shall be treated as a petition for reinstatement of a revoked certificate.

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26. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 121504. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

THOMAS HWEI HO, M.D.
Respondent

I have read and fully discussed with Respondent Thomas Hwei Ho, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

PETER R. OSINOFF, ESQ.
Attorney for Respondent

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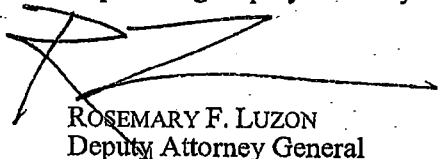
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 1/29/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Interim Order Imposing License Restrictions No. 800-2017-035146

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9074
7 Facsimile: (619) 645-2061

8 *Attorneys for Petitioner*

9
10 **BEFORE THE**
11 **OFFICE OF ADMINISTRATIVE HEARINGS**
STATE OF CALIFORNIA

12 **KIMBERLY KIRCHMEYER,**
13 Executive Director,
14 Medical Board of California,
15 Department of Consumer Affairs,
State of California,

16 *Petitioner,*

17 v.

18 **THOMAS HWEI HO, M.D.**
19 16345 Ponderosa Street
Fountain Valley, CA 92708
20 Physician's and Surgeon's Certificate
No. A 121504,

21 *Respondent.*

Case No. 800-2017-035146

**STIPULATION OF THE PARTIES RE
INTERIM ORDER IMPOSING LICENSE
RESTRICTIONS AND ORDER**

23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Kimberly Kirchmeyer (Petitioner) is the Executive Director of the Medical Board of
27 California and is represented in the above-entitled matter by Xavier Becerra, Attorney General of
28 the State of California, by Deputy Attorney General Rosemary F. Luzon.

2. Thomas Hwei Ho, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: Bonne, Bridges, Mueller, O'Keefe & Nichols, 355 South Grand Ave., Suite 1750, Los Angeles, CA 90071.

JURISDICTION

3. On May 31, 2012, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 121504 to Respondent. Physician's and Surgeon's Certificate No. A 121504 was in full force and effect at all times relevant herein and will expire on February 29, 2020, unless renewed.

4. Pursuant to the provisions of California Government Code section 11529, an administrative law judge of the Medical Quality Hearing Panel established pursuant to section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. Interim orders may also be issued without notice if it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice.

FACTUAL BASIS FOR INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

5. Respondent admits that Petitioner could establish a prima facie case establishing that Respondent is presently unable to practice medicine safely without restrictions due to a mental or physical condition and that permitting him to continue to practice medicine without restrictions would endanger the public health, safety and welfare. The admissions made by Respondent herein are only for the purposes of this Interim Suspension Order proceeding, and shall not be admissible in any other criminal or civil proceeding.

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1 6. Respondent agrees to the issuance of an Interim Order Imposing License Restrictions
2 under Government Code section 11529 immediately restricting his Physician's and Surgeon's
3 Certificate No. A 121504 as detailed in paragraph 8, below.

4 7. In exchange for Respondent's admissions, above, Petitioner agrees to file this
5 stipulation in lieu of filing a petition for interim order of suspension and supporting affidavits,
6 with the Office of Administrative Hearings in San Diego, California.

7 8. Based on the foregoing stipulations and agreements, the parties hereby stipulate
8 and agree that an interim order imposing the following license restrictions on Respondent's
9 Physician's and Surgeon's Certificate No. A 121504 should be issued forthwith by the Office of
10 Administrative Hearings, in order to protect the public health, safety and welfare. The parties
11 further stipulate and agree that, once this interim order imposing license restrictions is issued by
12 the Office of Administrative Hearings, Respondent shall be required to fully comply with the
13 following license restrictions until issuance of a final decision by the Medical Board of California
14 on an Accusation to be filed against him, or until further order from the Office of Administrative
15 Hearings:

16 A. ALCOHOL - ABSTAIN FROM USE.

17 Respondent shall abstain completely from the use of products or beverages
18 containing alcohol.

19 If Respondent has a confirmed positive biological fluid test for alcohol,
20 Respondent shall receive a notification from the Board or its designee to immediately
21 cease the practice of medicine. The Respondent shall not resume the practice of
22 medicine until the final decision on an accusation is effective.

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1 B. CONTROLLED SUBSTANCES - ABSTAIN FROM USE.

2 Respondent shall abstain completely from the personal use or possession of
3 controlled substances as defined in the California Uniform Controlled Substances
4 Act, dangerous drugs as defined by Business and Professions Code section 4022, and
5 any drugs requiring a prescription. This prohibition does not apply to medications
6 lawfully prescribed to Respondent by another practitioner for a bona fide illness or
7 condition.

8 Within 15 calendar days of receiving any lawfully prescribed medications,
9 Respondent shall notify the Board or its designee of the: issuing practitioner's name,
10 address, and telephone number; medication name, strength, and quantity; and issuing
11 pharmacy name, address, and telephone number.

12 If Respondent has a confirmed positive biological fluid test for any substance
13 (whether or not legally prescribed) and has not reported the use to the Board or its
14 designee, Respondent shall receive a notification from the Board or its designee to
15 immediately cease the practice of medicine. The Respondent shall not resume the
16 practice of medicine until the final decision on an accusation is effective.

17 C. BIOLOGICAL FLUID TESTING.

18 Respondent shall immediately submit to random biological fluid testing, at
19 Respondent's expense, upon request of the Board or its designee. "Biological fluid
20 testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle
21 testing, or similar drug screening approved by the Board or its designee. Respondent
22 shall make daily contact with the Board or its designee to determine whether
23 biological fluid testing is required. Respondent shall be tested on the date of the
24 notification as directed by the Board or its designee. The Board may order a
25 Respondent to undergo a biological fluid test on any day, at any time, including
26 weekends and holidays. Except when testing on a specific date as ordered by the
27 Board or its designee, the scheduling of biological fluid testing shall be done on a
28 random basis. The cost of biological fluid testing shall be borne by the Respondent.

1 Prior to practicing medicine, Respondent shall contract with a laboratory or
2 service, approved in advance by the Board or its designee, that will conduct random,
3 unannounced, observed, biological fluid testing and meets all of the following
4 standards:

5 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing
6 Industry Association or have completed the training required to serve as a collector
7 for the United States Department of Transportation.

8 (b) Its specimen collectors conform to the current United States Department of
9 Transportation Specimen Collection Guidelines.

10 (c) Its testing locations comply with the Urine Specimen Collection Guidelines
11 published by the United States Department of Transportation without regard to the
12 type of test administered.

13 (d) Its specimen collectors observe the collection of testing specimens.

14 (e) Its laboratories are certified and accredited by the United States Department
15 of Health and Human Services.

16 (f) Its testing locations shall submit a specimen to a laboratory within one (1)
17 business day of receipt and all specimens collected shall be handled pursuant to chain
18 of custody procedures. The laboratory shall process and analyze the specimens and
19 provide legally defensible test results to the Board within seven (7) business days of
20 receipt of the specimen. The Board will be notified of non-negative results within
21 one (1) business day and will be notified of negative test results within seven (7)
22 business days.

23 (g) Its testing locations possess all the materials, equipment, and technical
24 expertise necessary in order to test Respondent on any day of the week.

25 (h) Its testing locations are able to scientifically test for urine, blood, and hair
26 specimens for the detection of alcohol and illegal and controlled substances.

27 (i) It maintains testing sites located throughout California.

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1 (j) It maintains an automated 24-hour toll-free telephone system and/or a
2 secure on-line computer database that allows the Respondent to check in daily for
3 testing.

4 (k) It maintains a secure, HIPAA-compliant website or computer system that
5 allows staff access to drug test results and compliance reporting information that is
6 available 24 hours a day.

7 (l) It employs or contracts with toxicologists that are licensed physicians and
8 have knowledge of substance abuse disorders and the appropriate medical training to
9 interpret and evaluate laboratory biological fluid test results, medical histories, and
10 any other information relevant to biomedical information.

11 (m) It will not consider a toxicology screen to be negative if a positive result is
12 obtained while practicing, even if the Respondent holds a valid prescription for the
13 substance.

14 Prior to changing testing locations for any reason, including during vacation or
15 other travel, alternative testing locations must be approved by the Board and meet the
16 requirements above.

17 The contract shall require that the laboratory directly notify the Board or its
18 designee of non-negative results within one (1) business day and negative test results
19 within seven (7) business days of the results becoming available. Respondent shall
20 maintain this laboratory or service contract during the period of probation.

21 A certified copy of any laboratory test result may be received in evidence in any
22 proceedings between the Board and Respondent.

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1 If a biological fluid test result indicates Respondent has used, consumed,
2 ingested, or administered to himself a prohibited substance, the Board shall order
3 Respondent to cease practice and instruct Respondent to leave any place of work
4 where Respondent is practicing medicine or providing medical services. The Board
5 shall immediately notify all of Respondent's employers, supervisors and work
6 monitors, if any, that Respondent may not practice medicine or provide medical
7 services while the cease-practice order is in effect.

8 A biological fluid test will not be considered negative if a positive result is
9 obtained while practicing, even if the practitioner holds a valid prescription for the
10 substance. If no prohibited substance use exists, the Board shall lift the cease-
11 practice order within one (1) business day.

12 After the issuance of a cease-practice order, the Board shall determine whether
13 the positive biological fluid test is in fact evidence of prohibited substance use by
14 consulting with the specimen collector and the laboratory, communicating with the
15 licensee, his treating physician(s), other health care provider, or group facilitator, as
16 applicable.

17 For purposes of this condition, the terms "biological fluid testing" and "testing"
18 mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or
19 hair.

20 For purposes of this condition, the term "prohibited substance" means an illegal
21 drug, a lawful drug not prescribed or ordered by an appropriately licensed health care
22 provider for use by Respondent and approved by the Board, alcohol, or any other
23 substance the Respondent has been instructed by the Board not to use, consume,
24 ingest, or administer to himself.

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1 If the Board confirms that a positive biological fluid test is evidence of use of a
2 prohibited substance, Respondent has committed a major violation, as defined in
3 section 1361.52(a), and the Board shall impose any or all of the consequences set
4 forth in section 1361.52(b), in addition to any other terms or conditions the Board
5 determines are necessary for public protection or to enhance Respondent's
6 rehabilitation.

7 D. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS.

8 Within seven (7) days of the date of issuance by the Office of Administrative
9 Hearings of this Interim Order Imposing License Restrictions, Respondent shall
10 submit to the Board or its designee, for its prior approval, the name of a substance
11 abuse support group which he shall attend for the duration of probation. Respondent
12 shall attend substance abuse support group meetings at least once per week, or as
13 ordered by the Board or its designee. Respondent shall pay all substance abuse
14 support group meeting costs.

15 The facilitator of the substance abuse support group meeting shall have a
16 minimum of three (3) years experience in the treatment and rehabilitation of
17 substance abuse, and shall be licensed or certified by the state or nationally certified
18 organizations. The facilitator shall not have a current or former financial, personal, or
19 business relationship with Respondent within the last five (5) years. Respondent's
20 previous participation in a substance abuse group support meeting led by the same
21 facilitator does not constitute a prohibited current or former financial, personal, or
22 business relationship.

23 The facilitator shall provide a signed document to the Board or its designee
24 showing Respondent's name, the group name, the date and location of the meeting,
25 Respondent's attendance, and Respondent's level of participation and progress. The
26 facilitator shall report any unexcused absence by Respondent from any substance
27 abuse support group meeting to the Board, or its designee, within twenty-four (24)
28 hours of the unexcused absence.

1 E. PSYCHOTHERAPY.

2 Within seven (7) days of the date of issuance by the Office of Administrative
3 Hearings of this Interim Order Imposing License Restrictions, Respondent shall
4 submit to the Board or its designee for prior approval the name and qualifications of a
5 California-licensed board certified psychiatrist or a licensed psychologist who has a
6 doctoral degree in psychology and at least five years of postgraduate experience in
7 the diagnosis and treatment of emotional and mental disorders. Upon approval,
8 Respondent shall undergo and continue psychotherapy treatment, including any
9 modifications to the frequency of psychotherapy, until the Board or its designee
10 deems that no further psychotherapy is necessary.

11 The psychotherapist shall consider any information provided by the Board or its
12 designee and any other information the psychotherapist deems relevant and shall
13 furnish a written evaluation report to the Board or its designee. Respondent shall
14 cooperate in providing the psychotherapist with any information and documents that
15 the psychotherapist may deem pertinent.

16 Respondent shall have the treating psychotherapist submit quarterly status
17 reports to the Board or its designee. The Board or its designee may require
18 Respondent to undergo psychiatric evaluations by a Board-appointed board certified
19 psychiatrist. If, prior to the completion of probation, Respondent is found to be
20 mentally unfit to resume the practice of medicine without restrictions, the Board shall
21 retain continuing jurisdiction over Respondent's license and the period of probation
22 shall be extended until the Board determines that Respondent is mentally fit to
23 resume the practice of medicine without restrictions.

24 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

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1 F. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE.

2 Within seven (7) days of the date of issuance by the Office of Administrative
3 Hearings of this Interim Order Imposing License Restrictions, Respondent shall
4 submit to the Board or its designee for prior approval as a worksite monitor, the name
5 and qualifications of one or more licensed physician and surgeon, other licensed
6 health care professional if no physician and surgeon is available, or, as approved by
7 the Board or its designee, a person in a position of authority who is capable of
8 monitoring the Respondent at work.

9 The worksite monitor shall not have a current or former financial, personal, or
10 familial relationship with Respondent, or any other relationship that could reasonably
11 be expected to compromise the ability of the monitor to render impartial and unbiased
12 reports to the Board or its designee. If it is impractical for anyone but Respondent's
13 employer to serve as the worksite monitor, this requirement may be waived by the
14 Board or its designee, however, under no circumstances shall Respondent's worksite
15 monitor be an employee or supervisee of the licensee.

16 The worksite monitor shall have an active unrestricted license with no
17 disciplinary action within the last five (5) years, and shall sign an affirmation that he
18 has reviewed the terms and conditions of Respondent's disciplinary order and agrees
19 to monitor Respondent as set forth by the Board or its designee.

20 Respondent shall pay all worksite monitoring costs.

21 The worksite monitor shall have face-to-face contact with Respondent in the
22 work environment on as frequent a basis as determined by the Board or its designee,
23 but not less than once per week; interview other staff in the office regarding
24 Respondent's behavior, if requested by the Board or its designee; and review
25 Respondent's work attendance.

26 The worksite monitor shall verbally report any suspected substance abuse to the
27 Board and Respondent's employer or supervisor within one (1) business day of
28 occurrence. If the suspected substance abuse does not occur during the Board's

1 normal business hours, the verbal report shall be made to the Board or its designee
2 within one (1) hour of the next business day. A written report that includes the date,
3 time, and location of the suspected abuse; Respondent's actions; and any other
4 information deemed important by the worksite monitor shall be submitted to the
5 Board or its designee within 48 hours of the occurrence.

6 The worksite monitor shall complete and submit a written report monthly or as
7 directed by the Board or its designee which shall include the following: (1)
8 Respondent's name and Physician's and Surgeon's Certificate number; (2) the
9 worksite monitor's name and signature; (3) the worksite monitor's license number, if
10 applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent
11 had face-to-face contact with the worksite monitor; (6) the names of worksite staff
12 interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any
13 change in Respondent's behavior and/or personal habits; and (9) any indicators that
14 can lead to suspected substance abuse by Respondent. Respondent shall complete
15 any required consent forms and execute agreements with the approved worksite
16 monitor and the Board, or its designee, authorizing the Board, or its designee, and
17 worksite monitor to exchange information.

18 If the worksite monitor resigns or is no longer available, Respondent shall,
19 within five (5) calendar days of such resignation or unavailability, submit to the
20 Board or its designee, for prior approval, the name and qualifications of a
21 replacement monitor who will be assuming that responsibility within fifteen (15)
22 calendar days. If Respondent fails to obtain approval of a replacement monitor within
23 sixty (60) calendar days of the resignation or unavailability of the monitor,
24 Respondent shall receive a notification from the Board or its designee to cease the
25 practice of medicine within three (3) calendar days after being so notified.
26 Respondent shall cease the practice of medicine until a replacement monitor is
27 approved and assumes monitoring responsibility.

28 ///

1 G. NOTIFICATION.

2 Within seven (7) days of the date of issuance by the Office of Administrative
3 Hearings of this Interim Order Imposing License Restrictions, the Respondent shall
4 provide a true copy of the Interim Order Imposing License Restrictions to the Chief
5 of Staff or the Chief Executive Officer at every hospital where privileges or
6 membership are extended to Respondent, at any other facility where Respondent
7 engages in the practice of medicine, including all physician and locum tenens
8 registries or other similar agencies, and to the Chief Executive Officer at every
9 insurance carrier which extends malpractice insurance coverage to Respondent.
10 Respondent shall submit proof of compliance to the Board or its designee within 15
11 calendar days.

12 This condition shall apply to any change(s) in hospitals, other facilities or
13 insurance carrier.

14 H. VIOLATION(S) OF INTERIM ORDER IMPOSING LICENSE
15 RESTRICTIONS.

16 Any violation of this Interim Order Imposing License Restrictions by
17 Respondent shall constitute unprofessional conduct and grounds for disciplinary
18 action.

19 From June 26, 2018 to July 7, 2018, Respondent represents that he has been
20 approved by his monitoring and treatment group at Garden Grove Hospital to travel
21 out of the country. During this time period only, Respondent's compliance with
22 subsections C, D, E, and F of paragraph 8, above, shall be stayed. Upon returning
23 from this trip, Respondent shall immediately submit to breathalyzer, hair follicle
24 testing, and nail testing, at Respondent's expense, as required by the Board or its
25 designee and Respondent shall immediately resume compliance with subsections C,
26 D, E, and F of paragraph 8, above.

27 ///

28 ///

1 “(f) In all cases in which an interim order is issued, and an accusation is not
2 filed and served pursuant to Sections 11503 and 11505 within 30 days of the date
3 on which the parties to the hearing on the interim order have submitted the matter,
4 the order shall be dissolved. Upon service of the accusation the licensee shall
5 have, in addition to the rights granted by this section, all of the rights and
6 privileges available as specified in this chapter. If the licensee requests a hearing
7 on the accusation, the board shall provide the licensee with a hearing within 30
8 days of the request, unless the licensee stipulates to a later hearing, and a decision
9 within 15 days of the date the decision is received from the administrative law
10 judge, or the board shall nullify the interim order previously issued, unless good
11 cause can be shown by the Division of Medical Quality for a delay.

12 “(g) If an interim order is issued, a written decision shall be prepared within 15
13 days of the hearing, by the administrative law judge, including findings of fact and
14 a conclusion articulating the connection between the evidence produced at the hearing and
15 the decision reached.”

16 13. Having the benefit of counsel, Respondent hereby knowingly, intelligently,
17 freely and voluntarily waives and gives up each and every one of the rights set forth and/or
18 referenced in paragraph 12, above.

19 **ADDITIONAL PROVISIONS**

20 14. The parties hereby stipulate that all proceedings in the above-entitled Interim Order
21 Imposing License Restrictions matter shall be conducted at the Office of Administrative
22 Hearings located in San Diego, California.

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25 ///


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28 ///

1 15. The parties further stipulate that copies of this "Stipulation of the Parties Re Interim.
2 Order Imposing License Restrictions," including copies of signatures appearing thereon, may be
3 used in lieu of original documents and signatures and, further, that such copies and signatures
4 shall have the same force and effect as originals.

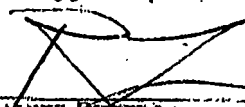
5
6 DATED: June 7, 2018


THOMAS HWEI HO, M.D.
Respondent

7
8
9 DATED: June 7, 2018


PETER R. OSINOFF, ESQ.
Attorney for Respondent

10
11
12 DATED: 6/8/18


XAVIER BRNERA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Petitioner

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1 **INTERIM ORDER IMPOSING LICENSE RESTRICTIONS**

2 Based on the foregoing stipulations and agreements, an Interim Order Imposing License
3 Restrictions is hereby issued immediately imposing license restrictions on Physician's and
4 Surgeon's Certificate No. A 121504, heretofore issued by the Medical Board of California to
5 Respondent Thomas Hwei Ho, M.D., and, accordingly, Respondent is hereby immediately
6 ordered to comply with all of the terms, conditions and license restrictions contained in paragraph
7 8, above. This Interim Order Imposing License Restrictions shall remain in full force and effect
8 until issuance of a final decision by the Medical Board of California on an Accusation to be filed
9 against Respondent, or until further order from the Office of Administrative Hearings. Any
10 motion to vacate this Interim Order Imposing License Restrictions shall be filed in accordance
11 with the provisions of Title 1, California Code of Regulations, sections 1006 and 1022. However,
12 no such motion may be heard on an *ex parte* basis and any motion to vacate this Interim Order
13 Imposing License Restrictions shall be served on Petitioner's counsel and filed with the Office of
14 Administrative Hearings no less than thirty (30) business days prior to any hearing on the motion.
15 Once served and filed, no such motion shall be decided without first affording the parties the
16 opportunity to present oral argument.

17 From June 26, 2018 to July 7, 2018, Respondent represents that he has been approved by
18 his monitoring and treatment group at Garden Grove Hospital to travel out of the country. During
19 this time period only, Respondent's compliance with subsections C, D, E, and F of paragraph 8,
20 above, shall be stayed. Upon returning from this trip, Respondent shall immediately submit to
21 breathalyzer, hair follicle testing, and nail testing, at Respondent's expense, as required by the
22 Board or its designee and Respondent shall immediately resume compliance with subsections C,
23 D, E, and F of paragraph 8, above.

24 IT IS SO ORDERED this 8th day of June, 2018.

25 
26 ADMINISTRATIVE LAW JUDGE

Exhibit B

Accusation No. 800-2017-035146

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9074
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 4 20 18
BY R. Voong ANALYST

9
10 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
11 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 800-2017-035146

14 **Thomas Hwei Ho, M.D.**
16345 Ponderosa Street
15 Fountain Valley, CA 92708

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. A 121504,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about May 31, 2012, the Board issued Physician's and Surgeon's Certificate
26 No. A 121504 to Thomas Hwei Ho, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on February 29, 2020, unless renewed.

3. On or about June 8, 2018, an Order adopting the Stipulation of the Parties re Interim Order Imposing License Restrictions was issued by the Office of Administrative Hearings in the matter entitled, *Kimberly Kirchmeyer v. Thomas Hwei Ho., M.D.*, Case No. 800-2017-035146. Pursuant to said Order, Physician's and Surgeon's Certificate No. A 121504 is subject to the following license restrictions until issuance of a final decision by the Board on an Accusation to be filed against Respondent, or until further order from the Office of Administrative Hearings: (1) Alcohol – Abstain from Use; (2) Controlled Substances – Abstain from Use; (3) Biological Fluid Testing; (4) Substance Abuse Support Group Meetings; (5) Psychotherapy; (6) Worksite Monitor for Substance-Abusing Licensee; (7) Notification; and (8) Violation(s) of Interim Order Imposing Licensing Restrictions.

JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2220 of the Code states:

“Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . .” [Chapter 5, the Medical Practice Act.]

6. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

1 “(4) Be publicly reprimanded by the board. The public reprimand may include
2 a requirement that the licensee complete relevant educational courses approved by the
3 board.

4 “(5) Have any other action taken in relation to discipline as part of an order of
5 probation, as the board or an administrative law judge may deem proper.

6 “...”

7 7. Section 2234 of the Code states:

8 “The board shall take action against any licensee who is charged with
9 unprofessional conduct. In addition to other provisions of this article, unprofessional
10 conduct includes, but is not limited to, the following:

11 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
12 abetting the violation of, or conspiring to violate any provision of this chapter.

13 “(b) Gross negligence.

14 “(c) Repeated negligent acts. To be repeated, there must be two or more
15 negligent acts or omissions. An initial negligent act or omission followed by a
16 separate and distinct departure from the applicable standard of care shall constitute
17 repeated negligent acts.

18 “(1) An initial negligent diagnosis followed by an act or omission medically
19 appropriate for that negligent diagnosis of the patient shall constitute a single
20 negligent act.

21 “(2) When the standard of care requires a change in the diagnosis, act, or
22 omission that constitutes the negligent act described in paragraph (1), including, but
23 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
24 licensee’s conduct departs from the applicable standard of care, each departure
25 constitutes a separate and distinct breach of the standard of care.

26 “...”

27 ///

28 ///

1 “(e) The commission of any act involving dishonesty or corruption which is
2 substantially related to the qualifications, functions, or duties of a physician and
3 surgeon.

4 “...”

5 8. Unprofessional conduct under section 2234 of the Code is conduct which breaches the
6 rules or ethical code of the medical profession, or conduct which is unbecoming a member in
7 good standing of the medical profession, and which demonstrates an unfitness to practice
8 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

9 9. Section 2239 of the Code states:

10 “(a) The use or prescribing for or administering to himself or herself, of any
11 controlled substance; or the use of any of the dangerous drugs specified in Section
12 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
13 or injurious to the licensee, or to any other person or to the public, or to the extent that
14 such use impairs the ability of the licensee to practice medicine safely or more than
15 one misdemeanor or any felony involving the use, consumption, or
16 self-administration of any of the substances referred to in this section, or any
17 combination thereof, constitutes unprofessional conduct. The record of the conviction
18 is conclusive evidence of such unprofessional conduct.

19 “...”

20 10. Section 2266 of the Code states:

21 “The failure of a physician and surgeon to maintain adequate and accurate
22 records relating to the provision of services to their patients constitutes unprofessional
23 conduct.”

24 11. California Code of Regulations, title 16, section 1360, states:

25 “For the purposes of denial, suspension or revocation of a license, certificate or
26 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
27 or act shall be considered to be substantially related to the qualifications, functions or
28 duties of a person holding a license, certificate or permit under the Medical Practice

1 Act if to a substantial degree it evidences present or potential unfitness of a person
2 holding a license, certificate or permit to perform the functions authorized by the
3 license, certificate or permit in a manner consistent with the public health, safety or
4 welfare. Such crimes or acts shall include but not be limited to the following:

5 Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
6 violation of, or conspiring to violate any provision of the Medical Practice Act.”

7 12. Section 820 of the Code states:

8 “Whenever it appears that any person holding a license, certificate or permit
9 under this division or under any initiative act referred to in this division may be
10 unable to practice his or her profession safely because the licentiate’s ability to
11 practice is impaired due to mental illness, or physical illness affecting competency,
12 the licensing agency may order the licentiate to be examined by one or more
13 physicians and surgeons or psychologists designated by the agency. The report of the
14 examiners shall be made available to the licentiate and may be received as direct
15 evidence in proceedings conducted pursuant to Section 822.”

16 13. Section 822 of the Code states:

17 “If a licensing agency determines that its licentiate’s ability to practice his or
18 her profession safely is impaired because the licentiate is mentally ill, or physically ill
19 affecting competency, the licensing agency may take action by any one of the
20 following methods:

21 “(a) Revoking the licentiate’s certificate or license.

22 “(b) Suspending the licentiate’s right to practice.

23 “(c) Placing the licentiate on probation.

24 “(d) Taking such other action in relation to the licentiate as the licensing agency
25 in its discretion deems proper.

26 “The licensing section shall not reinstate a revoked or suspended certificate or
27 license until it has received competent evidence of the absence or control of the
28 condition which caused its action and until it is satisfied that with due regard for the

1 public health and safety the person's right to practice his or her profession may be
2 safely reinstated."

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Self Administration of Controlled Substances and Dangerous Drugs)**

5 14. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
6 disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of
7 the Code, in that he has administered controlled substances and dangerous drugs to himself, as
8 more particularly alleged hereinafter:

9 15. On or about July 13, 2017, Respondent had privileges at Garden Grove Hospital in
10 Garden Grove, California, where he was the assigned anesthesiologist for ten patient cases.
11 Respondent's final case of the day was the laparoscopic cholecystectomy of Patient A.¹

12 16. A day earlier, on or about July 12, 2017, Respondent began to experience nausea. As
13 a result, he did not take his prescription medications, clonazepam (Klonopin) and sertraline
14 (Zoloft), which he had been taking for the past 12 years for the treatment of panic disorder.
15 During the early morning hours on or about July 13, 2017, the nausea worsened and he also began
16 to experience bloody diarrhea.

17 17. At approximately 9:00 a.m. on or about July 13, 2017, Respondent arrived at Garden
18 Grove Hospital to commence work. He contacted the Chief of Anesthesia at Garden Grove
19 Hospital and asked for relief from his cases so that he could go home. The Chief of Anesthesia
20 suggested that Respondent contact an anesthesiologist who was covering another unit at the
21 hospital. Respondent did not contact the anesthesiologist. Despite feeling "lousy" and continuing
22 to experience diarrhea and vomiting, and despite still not taking his prescription medications for
23 panic disorder, Respondent proceeded to work on his ten patient cases.

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27 _____
28 ¹ References to "Patient A" herein are used to protect patient privacy.

1 18. After his penultimate case and before the start of Patient A's surgery, Respondent
2 continued to feel ill and began experiencing panic symptoms. Consequently, Respondent injected
3 himself with 2 mg of lorazepam (Ativan)² and 2 mg of midazolam (Versed).³ Both medications
4 belonged to patients. The supply of controlled substances to anesthesiologists at Garden Grove
5 Hospital is audited by the hospital pharmacy on a daily basis. Respondent made an entry in
6 Patient A's chart to the effect that lorazepam (Ativan) had been administered to Patient A.

7 19. During Patient A's surgery, Respondent left the operating room (OR) on at least two
8 occasions, with Patient A asleep on the operating table. On one occasion, he went to the
9 bathroom in the doctors' lounge (or breakroom), and had to be called three times before he
10 emerged from the lounge and returned to the OR. Respondent was observed walking in the
11 wrong direction and was redirected to the correct OR by a registered nurse. On the second
12 occasion, Respondent was found unconscious behind the locked door of a toilet stall in the
13 doctors' lounge. Respondent awoke but was unable to open the door himself, and a security
14 guard forced the door open for him. A syringe was found on the floor near Respondent, and the
15 water in the toilet bowl was tinged with a pink color. The water tank of the toilet was broken,
16 flooding the floor of the bathroom and the doctors' lounge. Respondent returned to the OR and,
17 since Patient A's surgery had been completed by then, Respondent commenced extubating Patient
18 A and waking Patient A up.

19 20. During Patient A's surgery, another anesthesiologist was present in the OR and
20 offered to help Respondent with the case. Respondent declined.

21 21. When questioned the following day by Garden Grove Hospital staff, on or about July
22 14, 2017, Respondent admitted only to the use of his prescription benzodiazepine. On the same
23

24 ² Lorazepam is a Schedule IV controlled substance pursuant to Health and Safety Code
25 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
section 4022.

26 ³ Midazolam, marketed under the trade name Versed, among others, is a medication used
27 for anesthesia, procedural sedation, trouble sleeping, and severe agitation. It works by inducing
28 sleepiness, decreasing anxiety, and causing a loss of ability to create new memories. It is a
Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision
(d), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 day, blood and urine samples were obtained from Respondent. The blood sample tested positive
2 for benzodiazepines, including lorazepam, midazolam and clonazepam.⁴

3 22. On or about July 26, 2017, the syringe found near Respondent on or about July 13,
4 2017, tested positive for the midazolam as well as propofol (Diprivan).^{5,6}

5 23. On or about December 21, 2017, Respondent attended an interview as part of the
6 Board's investigation. At the interview, Respondent admitted that, during Patient A's surgery, he
7 left the OR, went to the doctors' lounge, and self-medicated twice with a total of 70 mg of
8 propofol. Initially, he administered 20 mg of propofol to himself and, having felt nothing except
9 slight drowsiness, he then administered 50 mg of propofol to himself approximately one minute
10 later.

11 SECOND CAUSE FOR DISCIPLINE

12 (Use of Drugs to the Extent, or in a Manner, as to be Dangerous 13 to Respondent, Another Person, or the Public)

14 24. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
15 disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of
16 the Code, in that he has used controlled substances and dangerous drugs to an extent, or in such a
17 manner, as to be dangerous or injurious to himself, another person, or the public, or to an extent
18 that such use impaired his ability to practice medicine safely, as more particularly alleged in
19 paragraphs 14 to 23, above, which are hereby incorporated by reference and realleged as if fully
20 set forth herein.

21 ///

22
23 ⁴ Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety Code
24 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
section 4022.

25 ⁵ Propofol Injectable Emulsion is an intravenous sedative-hypnotic agent for use in the
26 induction and maintenance of anesthesia or sedation. Intravenous injection of a therapeutic dose
of propofol induces hypnosis, with minimal excitation, usually within 40 seconds from the start of
injection. As with other rapidly acting intravenous anesthetic agents, the half-time of the blood-
brain equilibration is approximately 1 to 3 minutes.

27 ⁶ Propofol is not a controlled substance and is freely available to anesthesiologists in the
28 OR.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 25. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
5 the Code, in that he committed gross negligence in his practice of medicine, as more particularly
6 alleged in paragraphs 14 to 23, above, which are hereby incorporated by reference and re-alleged
7 as if fully set forth herein.

8 26. Respondent committed gross negligence, which included, but was not limited to the
9 following:

10 A. Respondent left the OR on at least two occasions during Patient A's
11 surgery and did not secure a qualified anesthesia provider to care for the patient in his
12 absence;

13 B. Respondent diverted controlled substances for his own use;

14 C. Respondent falsified medical records to conceal his diversion of
15 controlled substances;

16 D. Respondent administered controlled substances to himself; and

17 E. Respondent practiced medicine while under the influence of controlled
18 substances and dangerous drugs.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Repeated Negligent Acts)**

21 27. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
22 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of
23 the Code, in that he committed repeated negligent acts in his practice of medicine, as more
24 particularly alleged hereinafter:

25 A. Paragraphs 14 to 26, above, are hereby incorporated by reference and re-
26 alleged as if fully set forth herein.

27 ///

28 ///

1 B. Respondent provided patient care despite suffering from gastrointestinal
2 symptoms, panic attack symptoms, and symptoms from his self-administration of
3 controlled substances and dangerous drugs.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Commission of Dishonest or Corrupt Acts)**

6 28. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
7 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), of
8 the Code, in that he committed dishonest or corrupt acts in his care and treatment of Patient A, as
9 more particularly alleged in paragraphs 14 to 23, above, which are hereby incorporated by
10 reference and re-alleged as if fully set forth herein.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Adequate and Accurate Medical Records)**

13 29. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
14 disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that
15 he failed to maintain adequate and accurate records regarding his care and treatment of Patient A,
16 as more particularly alleged in paragraphs 14 to 23, above, which are hereby incorporated by
17 reference and re-alleged as if fully set forth herein.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(General Unprofessional Conduct)**

20 30. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
21 disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct
22 which breaches the rules or ethical code of the medical profession, or conduct which is
23 unbecoming to a member in good standing of the medical profession, and which demonstrates an
24 unfitness to practice medicine, as more particularly alleged in paragraphs 14 to 23, above, which
25 are hereby incorporated by reference and realleged as if fully set forth herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Violating or Attempting to Violate Any Provision of the Medical Practice Act)**

3 31. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
4 disciplinary action under sections 2227 and 2234, subdivision (a), of the Code, and section 1360
5 of title 16 of the California Code of Regulations, in that Respondent has violated or attempted to
6 violate, directly or indirectly, provisions or terms of the Medical Practice Act, as more particularly
7 alleged in paragraphs 14 to 30, above, which are hereby incorporated by reference and realleged
8 as if fully set forth herein.

9 **SECTION 822 CAUSE FOR ACTION**

10 **(Mental Illness and/or Physical Illness Affecting Competency)**

11 32. Respondent has subjected his Physician's and Surgeon's Certificate No. A 121504 to
12 action under section 822 of the Code in that his ability to practice medicine safely is impaired
13 because he is mentally ill and/or physically ill affecting competency, as more particularly alleged
14 in paragraphs 14 to 23, above, which are hereby incorporated by reference and realleged as if fully
15 set forth herein.

16 **DISCIPLINE CONSIDERATIONS**

17 33. To determine the degree of discipline, if any, to be imposed upon Respondent,
18 Complainant alleges that, in or about December 2005, while Respondent was an anesthesia
19 resident in Massachusetts, Respondent fell asleep during surgery due to medication, and that, on
20 or about January 12, 2006, Respondent inhaled isoflurane during a lunch break and passed out in
21 the call room. As a result, in or about 2007, Respondent entered into a five-year probation
22 agreement with the Massachusetts Board of Registration in Medicine. Upon application for
23 licensure to the Medical Board of California, Respondent was issued a California Physician's and
24 Surgeon's License concurrently with a Public Letter of Reprimand dated on or about June 1,
25 2012, "for self medicating ... with anesthetics during a panic attack while completing
26 postgraduate training."

27 ///

28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:


1. Revoking or suspending Physician's and Surgeon's Certificate No. A 121504, issued to Respondent Thomas Hwei Ho, M.D.;

2. Revoking, suspending or denying approval of Respondent Thomas Hwei Ho, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Thomas Hwei Ho, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: October 4, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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